

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**LINDA G. CHOINIERE,**

**Plaintiff,**

**vs.**

**PRESBYTERIAN HEALTHCARE  
SERVICES, INC., a New Mexico corporation,**

**Defendant.**

**No. CV00-328 JP/RLP**

**PLAINTIFF'S RESPONSE BRIEF IN OPPOSITION TO PHS' CROSS-MOTION IN  
LIMINE TO EXCLUDE PLAINTIFF'S ECONOMIC EXPERT, BRIAN McDONALD**

Plaintiff, by and through her attorney of record, J. Edward Hollington, hereby submits her response brief in opposition to PHS' cross-motion to exclude Plaintiff's economic expert, Brian McDonald.

***DR. McDONALD'S TESTIMONY IS BASED UPON  
PLAINTIFF'S PRIOR EARNINGS AND WOULD  
ASSIST THE TRIER OF FACT IN DETERMINING DAMAGES***

As a way to cloud the issues before this Court, Defendant has asserted a cross-motion to exclude the testimony of Brian McDonald, Plaintiff's economics expert witness. Unlike Toney, however, the basis of McDonald's opinion is readily identifiable - Plaintiff's prior earnings from years 1996 - 1999. *See, pg. 12:20 through pg. 13:8, McDonald Deposition, Exhibit 3, Defendant's Response.* This three year average totaled to \$113,631. *See, pg. 12:20-24, McDonald Deposition, Exhibit 3, Defendant's Response.* It included a base pay which was guaranteed and a commission, which varied depending on the volume of business. *See, pg. 15:10-17, McDonald Deposition, Exhibit 3, Defendant's Response.*

Contrary to Defendant's assertions, these facts supported McDonald's opinions regarding Plaintiff's lost income, brought to the present value, including fringe benefits and commissions. McDonald took into consideration a woman, aged 40 to 44, with a master's degree, and determined that her "post-termination" re-employment was \$51,855. *See, pg. 34:13-20, McDonald Deposition, Exhibit A, hereto.* This figure is substantially less than the \$113,631 three-year average. He continued this analysis, included a 24.46 annual rate of growth, and found that Plaintiff's pretermination earnings would not be reached until 2004. *See, pg. 34:21 through 36:16, McDonald Deposition, Exhibit A, hereto.*

Thus, he was able to conclude the damages suffered by Plaintiff as a result of Defendant's wrongful termination. This empirical data will assist the trier of fact in calculating damages.

Defendant raises two other issues in arguing that McDonald's testimony should be excluded, the inability to earn commissions, and Plaintiff's employability. These issues are nothing more than red-herrings. First, the issue of commissions is more appropriate cross-examination. Defendant is free to challenge McDonald's conclusions. This is the very essence of the adversarial relationship, and more particularly applied expert witnesses. Expert witnesses are frequently asked different variations and hypothetical questions by creative counsel in order to make a point.

With regard to Plaintiff's employability, McDonald testified that he is not a vocational expert. *See, pg. 38, McDonald Deposition, Exhibit 3, Defendant's Response.* McDonald has made no attempt to assess that aspect of the case. *See, pg. 38:17-20, McDonald Deposition,*

*Exhibit 3, Defendant's Response.*<sup>1</sup>

McDonald is a well-recognized expert in economics, having qualified as an expert witness in numerous cases and having testified in all courts within the State of New Mexico. *See, Curriculum Vitae, Brian McDonald, Exhibit B, hereto.* He was asked to make certain calculations regarding Plaintiff's economic damages, including back pay and front pay. *See, pg. 7:8-14, McDonald Deposition, Exhibit 3, Defendant's Response.* McDonald was asked to determine loss of income based on reasonable projections and historical economic studies. He reviewed Plaintiff's salary history from 1996 through 1999, and applied this information to proven methodology, and was able to determine Plaintiff's losses. McDonald took into consideration Plaintiff's age, education, and work history and calculated Plaintiff's post-termination damages. McDonald recognized that Plaintiff was not the "average" service industry worker, but rather, someone that was excelling in her career before being wrongfully discharged. Taking all this evidence into consideration, McDonald was able to formulate his expert opinions. This information is vital in assisting the fact-finder in assessing Plaintiff's losses and ability to recover from Defendant's misconduct and, unlike Toney, McDonald based his analysis on admissible

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<sup>1</sup> This did not preclude Defendant's counsel from examining McDonald on the issue of Plaintiff's employability. *See, pg. 48:1 through 50:25, McDonald Deposition, Exhibit 3, Defendant's Response.* McDonald testified that:

Linda Choiniere is not your average service worker. She's making \$113,000. Her income is well above the average, well above the average for a woman of her age and education. It's well above the average for service worker. And there are studies that show that the higher your salary, the longer it takes you to find work. In fact, there used to be a rule of thumb in the human resources area that for every \$10,000 you make, it takes you a month to find a job. So someone who is Linda Choiniere's income range, that rule of thumb would say 11 or 12 months to find a job.

*See, pg. 48:23 - 49:10, McDonald Deposition, Exhibit 3, Defendant's Response.*

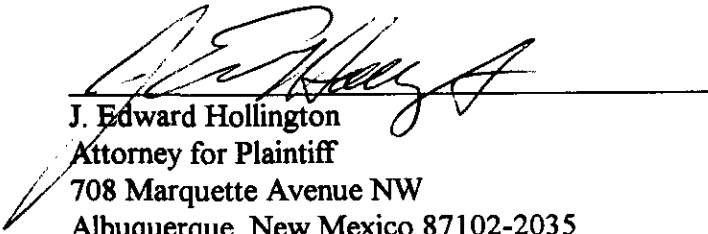
evidence, Plaintiff's salary history. In such a situation, McDonald's testimony should be admitted for the jury to weigh under Rule 702.

**CONCLUSION**

For the reasons set forth above, Plaintiff prays for an Order denying Defendant's cross-motion to exclude the testimony of Brian McDonald and for such other and further relief as the Court deems just and proper.

Respectfully submitted this \_\_\_\_ day of January, 2001.

J. EDWARD HOLLINGTON & ASSOCIATES, P.A.



J. Edward Hollington  
Attorney for Plaintiff  
708 Marquette Avenue NW  
Albuquerque, New Mexico 87102-2035  
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I hereby certify that a true and correct copy of the foregoing pleading was ~~mailed~~<sup>filed</sup> to the following on this 8th day of January, 2001:

Robert C. Conklin, Esq.  
KELEHER & McLEOD, P.A.  
P.O. Drawer AA  
Albuquerque, New Mexico 87103



J. Edward Hollington

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO  
3 LINDA G. CHOINIÈRE,  
4 Plaintiff,  
5 -vs- CIV-00-328 JP/RLP  
6 PRESBYTERIAN HEALTHCARE SERVICES, INC.,  
7 a New Mexico corporation,  
8 Defendant.  
9  
10 DEPOSITION OF M. BRIAN McDONALD, Ph.D.  
11 October 10, 2000  
12 1:30 p.m.  
13 12th Floor, 414 Silver, Southwest  
14 Albuquerque, New Mexico 87102  
15  
16 PURSUANT TO THE FEDERAL RULES OF CIVIL  
17 PROCEDURE, this deposition was:  
18  
19 TAKEN BY: JACQUELINE M. WOODCOCK, ESQ.  
20 ATTORNEY FOR THE DEFENDANT  
21  
22 REPORTED BY: Roderick D. Farrar, RDR, CRR, NH CCR #78  
23 Blasing Court Reporters, Inc.  
24 105 14th Street, Southwest  
25 Albuquerque, New Mexico 87102

EXHIBITS	FORMALLY MARKED/IDENTIFIED PAGE
1 - Dr. McDonald's handwritten notes	8
2 - Dr. McDonald's 7/8/00 report, including resume and fee schedule	10
3 - 7/7/00 fax from Rob Choiniere to Brian McDonald, W-2 forms, 1996 through 1999	13
4 - 7/7/00 fax from Rob Choiniere to Brian McDonald, commission payout for January 2000, Notice of Job Displacement, Severance Payment Acknowledgment	14
5 - 7/7/00 fax from Rob Choiniere to Brian McDonald, 401(k) Profit Sharing Plan Safe Harbor Notice, Shared Security Retirement Plan information	17
6 - 7/7/00 fax from Rob Choiniere to Brian McDonald, salary information and Incentive Bonus Plan	19
7 - 7/7/00 fax from Rob Choiniere to Brian McDonald, Year 2000 benefits enrollment worksheet	20
8 - 7/7/00 fax from Rob Choiniere to Brian McDonald, pension plan information	21
9 - 7/10/00 fax from Rob Choiniere to Brian McDonald, 1999 commissions and incentives information	23
10 - "Earnings Losses of Displaced Workers"	33
11 - "Money Income in the United States: 1997"	37
12 - "Employment Cost Trends"	45
13 - "Prices" - Tables B-58, -59, -71, -45	46
14 - "Median years To Retirement and Worklife Expectancy For The Civilian U.S. Population"	47
15 - "Worker displacement in the mid-1990s"	47

A P P E A R A N C E S	
For the Plaintiff:	
J. EDWARD HOLLINGTON & ASSOCIATES, P.A. Attorneys at Law 708 Marquette Avenue, Northwest Albuquerque, New Mexico 87102 BY: MR. J. EDWARD HOLLINGTON	
For the Defendant:	
KELEHER & McLEOD, P.A. Attorneys at Law Suite 1200 201 Third Street, Northwest P.O. Drawer AA Albuquerque, New Mexico 87103 BY: MS. JACQUELINE M. WOODCOCK	
Also Present:	
Mr. and Mrs. Rob Choiniere	
I N D E X	
EXAMINATION OF M. BRIAN McDONALD, Ph.D.	PAGE
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1 M. BRIAN McDONALD, Ph.D.  
2 after having been first duly sworn, under oath was  
3 questioned and testified as follows:  
4 EXAMINATION  
5 BY MS. WOODCOCK:  
6 Q. Good afternoon, Dr. McDonald.  
7 A. Good afternoon.  
8 Q. My name is Jacqueline Woodcock, and I am one  
9 of the attorneys for Presbyterian in this case,  
10 Choiniere versus Presbyterian.  
11 I know you've given many depositions in the past  
12 and know what to expect, but I will assume if you answer  
13 the question that you understand it. So if you don't  
14 understand it or if I state a poor question, please tell  
15 me, and I'll try to rephrase it.  
16 A. Okay.  
17 Q. And, also, if anybody needs to take a break at  
18 any time, just shout, and we can take a break. As long  
19 as the question pending gets answered, we can stop.  
20 Can you state your name and business address for  
21 the record.  
22 A. My name is Brian McDonald. My business address  
23 is 4219 Coe Drive, Northeast, Albuquerque, 87110.  
24 Q. And in what capacity are you testifying here  
25 today?

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1 in a union job. And, again, that's a factor discussed in  
2 this article, that union workers may not always be able  
3 to get back to their previous earnings level after  
4 they've been terminated. So there can be various  
5 factors.

6 Q. You used the three- to five-year period for this  
7 report, correct?

8 A. Yes.

9 Q. The bulk of this article seems to relate to  
10 Pennsylvania in the 1980s.

11 A. Well, that was the sample of workers that was  
12 used for the analysis. It was based upon a large sample  
13 of workers in Pennsylvania.

14 Q. But the paragraph you're relying on is the one  
15 we've identified?

16 A. Yes, and that describes their results for workers  
17 who were not involved in a non-mass-layoff situation.

18 (Exhibit 10 was marked for identification.)

19 Q. If we can look at, again, Exhibit 1 on the  
20 right-hand side where you've indicated  
21 "Post-Termination," you have no income listed for 2000.

22 A. That's correct.

23 Q. And is that based on your understanding when you  
24 wrote this report that she was not employed?

25 A. That's correct. As of July, she was not

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1 employed. And then I assumed, for the purposes of  
2 calculating front pay, that she would not be employed for  
3 the rest of 2000.

4 Q. What do you base those assumptions on?

5 A. It's just an assumption. It doesn't have to be  
6 based on anything. We're talking about the future when  
7 we're talking about front pay, so I have to make a  
8 scenario of her post-termination employment. So I've  
9 assumed she would not find another job until January  
10 2001.

11 Q. Okay.

12 A. But it's just an assumption.

13 Q. Okay. The income levels that you have listed --  
14 again, on the "Post-Termination" side, you have for 2001  
15 51,855, et cetera. That, again, is for a statistical  
16 female aged 40 to 44 with a master's degree?

17 A. The 51,855, that's correct, that would be the  
18 average income for a woman age 40 to 44 with a master's  
19 degree, and that would be in present value 2001. So  
20 that's where that number comes from.

21 Then after 2001, you'll see the post-termination  
22 income -- that her income is advancing fairly quickly, so  
23 that by 2004, she's back to where she would have been for  
24 2004 under the "Pre-Termination" area of the exhibit.  
25 And what I'm assuming is that between 2001, when she

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1 would have entered the labor force -- or reentered the  
2 labor force at the average earnings of a woman age 40 to  
3 44 with a master's degree, that her earnings would  
4 increase, so that by 2004 she would be back to her  
5 pretermination level. So I calculated the compound  
6 annual rate of growth to get her from the 51,855 up to  
7 what her pretermination earnings would be in 2004.

8 Q. And the initial figure -- this would relate to  
9 paragraph 8 in your report -- using the census data from  
10 1997 --

11 A. That's correct.

12 Q. -- in year 2000 dollars is 53,542?

13 A. In 2000 dollars, that's correct. And in the  
14 table, Exhibit 1, I show you the present value in 2001.

15 Q. Okay. How did you calculate -- or what do you  
16 base the number on going from 2001 to 2002? You have  
17 64,540, then going up to 2003. How did you calculate  
18 those jumps?

19 A. What I did is I calculated the compound average  
20 annual rate of growth that it would take to increase her  
21 earnings from 51,855 in 2001 to 99,976 in 2004. I'd need  
22 a calculator with a logarithm in it. I didn't put that  
23 in the report, but that's what that is.

24 Q. I can't tell if this one has one or not. That  
25 shows you how much I know. I don't think that has one.

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1 A. Yeah, it has a logarithm.

2 Q. Okay.

3 A. Okay. That's a 24.46-percent annual rate of  
4 growth. So I increased -- So the increase in 2002 is  
5 24.46 percent, then it's 24.46 percent again in 2003, and  
6 again in 2004. And that's the annual rate of growth that  
7 it takes to get her income from the initial starting  
8 point of 51,855 up to 99,976, which is the present value  
9 of what I say her pretermination income would be in 2004,  
10 and so then her earnings have been fully restored.

11 Q. Okay. Using this five-year model?

12 A. Well, 2004 would be the fourth year after her  
13 termination. So that's the midpoint of three to five  
14 years. So I'm assuming by the fourth year after her  
15 termination she would be fully -- her earnings would be  
16 fully restored.

17 Q. Are any of the resources you have here the census  
18 data you have that you refer to?

19 A. Yes, the "Money Income in the United States:  
20 1997," that would have been the data. In fact, the last  
21 page is for women, full-time, year-round workers. And in  
22 the middle block of numbers, "Mean Earnings," and then  
23 you'll see a column for "Master's degree," and then you  
24 go down to age 40 to 44 -- I need a ruler --

25 Q. This is very small print.

May, 1999

M. BRIAN MCDONALD, Ph.D.

4219 Coe Drive N.E.  
Albuquerque, New Mexico 87110  
(505) 255-4196 Home  
(505) 268-9746 Office

(505) 266-9875 - Fax  
email: bmcd@unm.edu

## EDUCATION

Ph. D. Economics, University of Pennsylvania, Philadelphia, Pa., May,  
1978, NDEA Title IV Three Year Fellowship  
B.A. Economics, Georgetown University, Washington, D.C., June, 1969  
Phi Beta Kappa, cum laude graduate

## PROFESSIONAL EXPERIENCE

### Economic Consultant

1979 to present

Qualified in New Mexico federal and state courts as expert witness in economics, primarily in the calculation of economic damages in wrongful death, personal injury, wrongful termination, and business loss cases. Consult on issues of state and local public finance and regional economic development.

Senior Economist (part-time)  
Bureau of Business and Economic Research  
University of New Mexico  
Albuquerque, New Mexico 87131

1999 to present

Manage state economic forecast service, providing short-term economic forecasts of the New Mexico economy. Prepare quarterly forecast report and conduct quarterly meetings for the benefit of public and private sector subscribers. Manage other contract research.

EXHIBIT

B



M. BRIAN MCDONALD, PHD

Director  
Bureau of Business and Economic Research  
University of New Mexico  
Albuquerque, New Mexico 87131

1982 - 1999

The Bureau is the major depository of economic and demographic data for the state of New Mexico made available through a specialized reference library (The Databank), the monthly New Mexico Business, and on the Internet at BBER's website ([www.unm.edu/~bber/](http://www.unm.edu/~bber/)). The Bureau also conducts a research program specializing in the analysis and projection of the New Mexico economy and population. A state econometric forecasting service is offered to New Mexico business and government organizations on a subscription fee basis. The Bureau performs contract research primarily in the areas of state and local public finance and other public policy issues such as welfare reform and health care.

Total staff numbers 12 FTE with an annual budget of approximately \$700 K. Also teach graduate and undergraduate courses in macro and micro theory, money and banking and regional economics as adjunct professor of economics. Supervise graduate student theses and dissertations

Associate Director for Research  
Bureau of Business and Economic Research  
University of New Mexico  
Albuquerque, New Mexico 87131

1978 - 1982

Responsible for the economic research program at the BBER. Develop new research projects, secure funding and direct the research as principal investigator. Supervise other BBER economists and work with faculty researchers from other disciplines in the conduct of research. Present research results in forums such as professional association meetings and state legislative and executive hearings.

Research accomplishments: \$60K SBA-funded research project analyzing the economic impact of workers' compensation and unemployment insurance regulations on small businesses in seven states; a three year \$325K research project funded by N.M. Water Resources Research Institute evaluating the economic impact of alternative resolutions of Pueblo Indian water rights; the implementation of a subscription-based economic forecasting service for the New Mexico economy using a quarterly state econometric model; and the evaluation of financial capacity of various New Mexico firms to comply with New Mexico air quality regulations.



M. BRIAN MCDONALD, PHD

Research Economist  
Logistics Management Institute, Washington, D.C.

1977 - 1978

Organized and directed contract research for government organizations primarily in the areas of procurement policy. Completed a study for the Office of Federal Procurement Policy which recommends a new profit policy on negotiated federal procurement to be implemented across federal departments. Another project developed a financial analysis methodology for use by Air Force acquisition personnel in the evaluation of contractor financial responsibility.

Teaching Fellow  
University of Pennsylvania  
Philadelphia, Pa.

1976 - 1977

Taught economic theory courses to undergraduates in the fall, spring, and summer semesters while completing my doctoral dissertation.

Procurement Research Analyst (Captain, USAF)  
Air Force Contract Management Division  
Kirtland AFB, New Mexico

1972 - 1976

Internal management consultant to the chief executive of the primary Air Force agency which is responsible for contract management on defense acquisitions at major aerospace contractors throughout the country. Developed statistical manpower model which forecasts and provides management guidance for the allocation of manpower resources; directed a study of aerospace productivity measurement; authored two publications, written for Air Force financial analysis personnel, which discuss in layman terms the causes of inflation, methods to forecast it, and the construction of inflation indexes unique to the nonmarket defense industry; analyzed the task priorities of the organization from the viewpoint of the staff, field units and the organization's major customers.

#### OTHER

Member, Professional Tax Study Committee, appointed by New Mexico State Legislature, 1994-1998.

M. BRIAN MCDONALD, PHD

Kirtland Federal Credit Union, Albuquerque, New Mexico, member, Board of Directors, 1982 to present; Chair, Asset/Liability Management Committee, 1990 to present; Chairman of the Board, 1984-1987; member of Supervisory Committee, 1981-1982.

Member, City of Albuquerque Economic Forecast Advisory Committee, 1990 to 1999

Forecast Contributor to Western Economic Blue Chip Indicators, monthly newsletter sponsored by Arizona State University reviewing the economic outlook for the western states, 1987 to 1999

Board of Directors, Tennis Club of Albuquerque, 1996-1998

Member, Finance Council, Aquinas Newman Center, 1996 to present. Chair since 1997.

Administration Representative to UNM Economic Impact Task Force, 1989-1992

Member, American Economic Association, National Association of Business Economists and National Association of Forensic Economists.

Member of Executive Committee, Association for University Business and Economic Research (AUBER), 1983 - 1985.

Lt. Colonel, United States Air Force Reserve, Retired.

#### PEER-REVIEW PUBLICATIONS/JOURNAL ARTICLES

**The Measurement of Economic Efficiency in the Defense Aerospace Industry**, Proceedings of the 36th meeting of the Military Operations Research Society, December, 1975.

**Educational Equity and the Fiscal Incidence of Public Education**, National Tax Journal, XXXII, No. 1 (March 1980). Abstracted in Journal of Economic Literature, XVIII, No. 4 (December, 1980).

**New Mexico Economic Review and Outlook**, Southwestern Review of Management and Economics, Vol. 2, No. 4 (Fall, 1982) (with Leo Carbajal).

**Water Availability in the New Mexico Upper Rio Grande to the Year 2000**, Natural Resources Journal, Vol. 22, No. 4 (October, 1982) (with John Tysseling). Reprinted in The U.S.-Mexico Border Region: Anticipating Resource Needs and Issues to the Year 2000, Cesar Sepulveda and Albert E. Utton (ed.), Texas Western Press, El Paso, TX 1984.

**Water Reallocation, Market Proficiency, and Conflicting Social Values**, Water and Agriculture in the Western U.S.: Conservation, Reallocation and Markets, Gary Weatherford (ed.), Westview Press, Boulder, Colorado, 1982 (with Lee Brown, John Tysseling and Charles DuMars). Reprinted (in part) in Perspectives on Water: Uses and Misuses, Allen F. Agrew, Lon C. Ruedisili and David H. Speidel (eds.), Oxford University Press, 1986.

M. BRIAN MCDONALD, PHD

**Contributing Editor**, Proceedings of 1983 Mountain States Region Economic Outlook Conference (co-sponsored by Wharton Econometric Forecasting Associates), Southwestern Review of Management and Economics, Volume 2, No. 4, (Fall 1982).

**New Mexico Economic Review and Outlook (1985)**, Southwestern Review of Management and Economics, Vol. 4, No. 2 (Summer, 1985) (with John Beasley).

**Review: AREMOS Data Management and Econometric Software**, Version 1.0, Economic Inquiry, Volume XXVI, November 2, April, 1988. (With David Boldt).

**The New Mexico Economy, The Southwest Economy in the 1990s: A Different Decade**, Gerald P. O'Driscoll, Jr. and Stephen P.A. Brown (eds.), Klumer Academic Publishers, Boston, MA, 1991.

**Financial Structure of New Mexico, New Mexico Government**, Third Edition, F. Chris Garcia, Paul L. Hain and Gilbert St. Claire (eds.), University of New Mexico Press, 1994 (with Juliana Boyle).

#### OTHER PUBLICATIONS

**Economic, Demographic, and Fiscal Impact of the NuChik Poultry Processing Plant on Artesia, New Mexico**, prepared for the City of Artesia, NM, February, 1998.

**Update of the New Mexico Tax Study, October, 1996**, prepared for New Mexico Legislative Finance Committee (with John Temple, Ed Blomdahl, and Dolores Bush-DeMarcus)

**1996 Urban Growth Projections, April, 1996**, prepared for the City of Albuquerque Planning Department

**Fiscal Analysis of the Proposed New County in the South Valley Unincorporated Areas of Bernalillo County, February, 1996**, prepared for the New Mexico Legislative Council Service

**New Mexico Tax Study, Volume I and II, June, 1994**, prepared for New Mexico Legislative Finance Committee (with Anna Lamberson and John Temple).

**Urban Growth Projections for Albuquerque and Vicinity, 1991-2002, January, 1993**, prepared for City of Albuquerque Planning Department.

**Urban Growth Trends for Albuquerque and Vicinity, 1980-1990, November, 1992**, prepared for City of Albuquerque Planning Department.

**Economic Impact of National Defense Spending in New Mexico**, published in August, 1992 New Mexico Progress, Sunwest Financial Services, Inc. and presented at Regional Economic Roundtable, Federal Reserve Bank of Kansas City, November 20, 1992.

M. BRIAN MCDONALD, PHD

**The Economic Impact of the New Mexico Division of Vocational Rehabilitation**, October, 1991.

**The Economic Impact of the New Mexico Health Care Industry**, New Mexico Hospital Association, 1990.

**FOR-UNM Bulletin**, Quarterly , January, 1990- March, 1999.

**Socioeconomic Projections for Albuquerque, 1980-2000**, a report prepared for the City of Albuquerque Planning Department, July, 1989.

**The New Mexico Economy: History and Outlook**, Paper presented at the "Economic Development Strategy for New Mexico" symposium sponsored by the University of New Mexico Institute for Public Policy, July 14, 1988 (with David Boldt).

**Business Climate: A Comparison of Selected Western Metropolitan Areas**, University of New Mexico, Bureau of Business and Economic Research, September, 1987 (with David Boldt).

**Projections of Water Availability in the Lower Rio Grande, Gila-San Francisco and Mimbres Drainage Basins to 2005**, Technical Completion Report Project No. 1345629, New Mexico Water Resources Research Institute, October, 1986 (with John Tysseling and David Boldt).

**An Econometric Forecasting Model of Electrical Energy and Peak Load Requirements for the State of New Mexico**, report prepared for the New Mexico Public Service Commission, July, 1986 (with Al Parker and Thomas Goodwin).

**Economic Impact of Alternative Resolutions of New Mexico Pueblo Indian Water Rights**, Technical Completion Report, Project No. B-064-NMEX, New Mexico Water Resources Research Institute, Las Cruces, New Mexico, WRRRI Report No 201, June, 1986 (with Philip Farah).

**Albuquerque Business Climate: A Comparative View**, Bureau of Business and Economic Research, University of New Mexico, June, 1986.

**Assessment of Duke City Lumber Company's Financial Capability To Comply With Air Quality Regulation 402(A) at its Cuba, New Mexico Sawmill**, confidential report to New Mexico Environmental Improvement Division, Air Quality Bureau, Bureau of Business and Economic Research, University of New Mexico, June, 1985.

**Projections of Water Availability in the Arkansas/White and Pecos River Basins to the Year 2005**, Technical Completion Report, Project No. 1423609, New Mexico Water Resources Research Institute, Las Cruces, New Mexico, WRRRI Report No. 186, April, 1984. (with John Tysseling).

M. BRIAN MCDONALD, PHD

**Health Care Coverage and the Medically Indigent in New Mexico**, report to New Mexico State Health Planning and Development Division, Bureau of Business and Economic Research, University of New Mexico, December, 1983 (with Lynn Wombold, Gerald Boyle and Max Bennett).

**The Economic Impact of Workers' Compensation and Unemployment Insurance Programs on Small Business**, Final Report to Small Business Administration under Grant No. SB-1A-00015-01-0, February, 1983 (with James Porter).

**New Mexico Uranium Industry: Current Assessment and Outlook**, report prepared for New Mexico Mining Association, September, 1982 (with Philip Farah).

**Sun Belt-Snowbelt Economics: The Case of New Mexico**, Quarterly Model Outlook, May 1982, Vol. 1, No. 4. Wharton Econometric Forecasting Associates, Philadelphia, Pa.

**The New Mexico Economic Forecasting Service--A Partnership with Private Industry, Government and Academia**, paper presented at the 60th Annual Conference of the Southwestern Social Science Association, San Antonio, TX, March, 1982.

**Evaluation of Kennecott Minerals Company's Chino Mines Division Smelter's Financial Eligibility for a primary Nonferrous Smelter Order**, confidential report prepared for New Mexico Environmental Improvement Division, Bureau of Business and Economic Research, University of New Mexico, February, 1981.

**Economic Impact of Compliance with New Mexico Air Quality Regulation #651 on Climax Chemical Company**, confidential report prepared for New Mexico Environmental Improvement Division, Bureau of Business and Economic Research, University of New Mexico, December, 1980.

**Intercity Bus Transportation in New Mexico**, Bureau of Business and Economic Research, University of New Mexico, report prepared under contract for the New Mexico Highway Department, May, 1980 (with Jerry Holmlund and John Temple).

**Case Studies in the Development of New Mexico Water Resource Institutions: The Middle Rio Grande Conservancy District and Urban Water Pricing**, Final Report, Project No. 1345640, New Mexico Water Resources Research Institute, January, 1980 with John Tysseling, Michael Browde and Lee Brown).

**Return on State's Investment and Analysis of Royalty Schedules at New Mexico Park and Recreation Concessions**, Bureau of Business and Economic Research, University of New Mexico, report prepared under contract for the New Mexico Department of Natural Resources, January, 1980 (with Leo Carbajal, Mark Resta and James Margard).

**FOR-UNM Economic Forecast of the New Mexico Economy**, quarterly since 1979.

M. BRIAN McDONALD, PHD

**The Distribution and Production of Education: A Disaggregate Analysis**, Ph.D. dissertation dealing with the issue of educational equity and the effectiveness of school resources, University of Pennsylvania, May 1978.

**The Outlook for the New Mexico Potash Producers**, New Mexico Business, December, 1978 (with John Temple).

**The Economic Impact of Proposed Air Quality Control Regulations on the New Mexico Potash Producers**, Bureau of Business and Economic Research, University of New Mexico, report prepared under contract for the New Mexico Environmental Improvement Division, Air Quality Bureau, November, 1978 (with John Temple.)

**A Uniform Profit Policy for Government Acquisition**, Logistics Management Institute, Washington, D.C., report prepared for the Office of Federal Procurement Policy under contract No. MDA903-77-C-0370, December, 1978 (with Robert K. Wood and Myron G. Myers).

**Financial Analysis Methodology for Defense Aerospace Contractors**, Logistics Management Institute, Washington, D.C. report prepared under contract for Air Force Systems Command, December, 1978 (with Robert O. Edmister and Josephus Parr).

#### PRESENTATIONS

"New Mexico Economic Outlook", Western Regional Science Association, annual meeting, February, 1998 and February, 1999

"New Mexico and Albuquerque Economy: Review and Outlook", The Center for the New West, Western Economic Outlook Symposium, January 14-15, 1993, February 21-22, 1994, June 20, 1996, and September 18, 1998, Denver, Colorado.

"New Mexico Economy: Review and Outlook", Federal Reserve Bank of Kansas City Regional Economic Roundtable, November 20, 1992, Kansas City, Missouri. Proceedings summarized in "The Tenth District: Moving Ahead Slowly", Tim R. Smith, Economic Review, Federal Reserve Bank of Kansas City, First Quarter 1993. Also presented at the Kansas City Fed's Regional Economic Roundtable in November, 1993, 1994, 1995, 1996, 1997, and 1998.

"Defense Spending in the Post-Cold War Environment", Roundtable sponsored by the Center for the New West, presentation on local (NM) impacts, October 22, 1991, Albuquerque, New Mexico.

"The Southwest Regional Economic Outlook", Southwest Corporate Federal Credit Union, 1990 Economic Forum, December 12, 1990, Dallas, Texas and 1993 Economic Forum, December 7, 1993, Dallas, Texas.

The New Mexico Economic Outlook" at The 1990s: A Different Decade, a conference sponsored by the Federal Reserve Bank of Dallas, October 26-27, 1989.

M. BRIAN MCDONALD, PHD

"New Mexico's and Albuquerque's Housing Outlook for the 1990s", New Mexico Housebuilders Association Annual Convention, September 28-29, 1989.

"New Mexico Economic Forecast", invited paper at Western Economic Association annual meeting, Lake Tahoe, Nevada, June 21, 1989.

"The Economic Outlook for Northern New Mexico", at monthly Board of Directors' meeting, Federal Reserve Bank of Kansas City, Denver Branch, April 4, 1989.

"The Economic Power of the Hispanic", invited presentation at the U.S. West SOMOS conference, Phoenix, Arizona, February 16-17, 1989.

"Demographic Outlook for the Southwestern Border States", presentation at seminar sponsored by Autonomous University of Mexico, Mexico City, April, 1988.

"New Mexico and Albuquerque Economic Outlook", Albuquerque Business Outlook Conference, annually since 1982.

#### STUDENT THESIS SUPERVISED

Shirley Wozniak, The Tourist Industry in New Mexico, Masters thesis, University of New Mexico, 1983. Won honorable mention award in 1983 Travel and Tourism Research Association's competition for masters students.

John Tysseling, Case Studies in the Development of New Mexico Water Resources Institutions, Masters thesis, University of New Mexico, 1980.

David Boldt, Business Climate, Quality of Life and Economic Growth, Ph.D. Dissertation, University of New Mexico, 1987.

Michael Hymel, Analysis of the Costs and Benefits of the New Mexico In-State CD Investment Program, Ph.D. Dissertation, University of New Mexico, 1987.

Julie Urban, Economic Analysis of Child Care Demand, Masters thesis, University of New Mexico, 1987

Bruce Williamson, Econometric Analysis of Directory Assistance Usage, Ph.D. Dissertation, University of New Mexico, 1993.

William Taylor, Economic Impact of Indian Gaming, Ph.D. Dissertations. University of New Mexico, in progress.



M. BRIAN McDONALD, PHD

## CONSULTING

New Mexico Environmental Improvement Division. Economic impact of air quality regulations of New Mexico businesses, including Kennecott Copper, Duke City Lumber, Climax Chemical Co. and New Mexico potash producers, 1978-present.

Public Service Company of New Mexico, In the Matter of the Prudence of Costs In Construction of Palo Verde Nuclear Generating Station, NMPSC Case No. 2087, January, 1989.

Transamerica v. Touche Ross, economic expert for the defendant in this accounting malpractice case, Gibson, Dunn and Crutcher, 1987-1988.

Mountain States Legal Foundation, Denver, Colorado. In the Matter of the Rates and Charges of the Mountain States Telephone and Telegraph Company before the New Mexico State Corporation Commission, Docket No. 1002 and 1032, December, 1983. In the matter of the rates and charges of Nevada Bell, Docket No. 85-1009, July, 1986.

Alto Village Services Corporation, Alto, New Mexico. Design of water rates and rate of return calculation for private water utility rate hearing before New Mexico Public Service Commission, Case No. 1879, 1983.

American Medical International, Beverly Hills, California. Financial analysis and evaluation of hospital revenue bond market in connection with hearing for certificate of need for new West Mesa hospital in Rio Rancho, New Mexico, December 1981-March, 1982.

Bernalillo County Sheriff's Officer Association and Western States Labor Relations Service, AFL-CIO. Analysis and projections of county revenues and expenditures to be used in labor negotiations, January, 1981.

Air Force Systems Command, Management Engineering Team (MET 25), Kirtland AFB, New Mexico, December, 1979 to September, 1980. A study updating statistical manpower models (standards) used to project and justify manpower requirements for the Air Force Contract Management Division.

Served as economic expert and testified in federal and state district court in New Mexico since 1979 in personal injury, wrongful death, employment and anti-trust/business litigation cases.

OTHER CASES TESTIFIED AS EXPERT AT TRIAL OR DEPOSITION

M. Brian McDonald, Ph.D.  
Economic Consultant

I have testified in federal and state district court in New Mexico for the last twenty years regarding economic damages in wrongful death, personal injury, employment termination, and business loss cases. Listed below are the names of the cases in which I have testified by deposition or at trial within the last three or four years. I do not know the docket numbers assigned. The name of the attorney who retained me is in parentheses.

1997

Phelps Dodge v. Hartford Steam Boiler (Bruce Hall)  
Felix Candelaria, Jr. v. Eastman Kodak (Roberto Ortega)  
Nell Morgan v. Wal-Mart (Joe Parker)  
Hans Jueng v. Public Service Company of New Mexico (Robert Conklin)  
Connie Chacon v. Teledyne Coordinators (Anthony Lopez)  
Fred Vigil v. Dorothy Acton (Alfonso Sanchez/Dennis Murphy)  
Rusty Gordon et. al. v. Stuart Guttman (Lisa Richard)  
EEOC v. Lockheed Martin (Kelly Humphrey)  
Eugene Barber v. MCI (Roger Eaton)  
Aragon v. Los Alamos National Laboratory (Bruce Hall)  
Jesse Huffman v. Veterans Hospital, et. al. (Thomas Chism)  
Jose Lucero v. Shannon, et. al. (Terry Word)  
Jennifer Russell v. Dennis E. Ready, M.D. (Terry Word)  
Ben Montoya v. Santa Fe Housing Authority (Ed Hollington)  
Reno Love Dominguez (Ramon I. Garcia/Ralph Shamas)  
Rod Kasiah (David Berlin/Stephen Moffat)  
Delta Automatic Systems v. Wayne Bingham, et.al. (Norm Gagne)  
Elizabeth Lujan v. KFC Corporation (Jere Corlett)  
Leonard Gordon v. Guttman (Lisa Richard)  
Priscilla Coriz v. Michael Romero (Jared Barliant)  
Gonzales v. Sollens and Stevenson (Roger Eaton/Michael Hart)  
Ernest Garcia v. Pirnelli Jones (David Proffit)  
Chibu Anaeme v. American Stores (Jeff Lowry, Charles Vigil)  
Billy R. Baldonado v. Pharmacia (James Gilman)  
Edwina Rico v. Betco (Walter Parr)  
Glenda Blemmer-Bly v. ENMR Telephone (Jill Henson)  
Barbara Morales (Janet Santillanes)

Trial/Deposition Testimony, M. Brian McDonald, Ph.D.

1998

Rito Quesada (Michael W. Lilley)  
Lewis v. Samson ad Ortiz (Jo Anne Holland)  
McKay, et. al. v. Sanders Law Firm, et. al. (William Gilstrap)  
Academy Plaza, Ltd. v. Hastings Books, Music & Video (Floyd Wilson)  
Doris Reiser v. Donald E. Wenner, M.D. (John Duhigg)  
Sherrie Busler v. L.W. Miller Transportation (Paul Becht)  
Robert and Irene Clingenpell (David Garcia)  
Dr. William Talbot v. Lovelace Health Systems (Ed Hollington)  
Anthony Lucero v. Southwest Coca-Cola Bottling (Warren Frost)  
Carla Hanna et. al. v. Thomas A. Naegele, D.O. (Terry Word)  
Jose F. Montoya, et. al. v. NM State Highway and Transportation  
Department (Damon Ely) SF 95-2521  
Bruce Walker v. ZHRI Texas Corporation (Damon Weems) 97-CV-  
796 JP/DJS  
Widmer v. New Mexico State Highway and Transportation Department  
(Barbara Vigil)  
Seefeld v. Hall and Presbyterian Health Systems (Terry Word)  
Chris Cowger v. Denson (James Gilman)  
Robert Lenham v. DAV (Charles Richardson/Tim Butler)  
Robert Clark v. Los Alamos National Laboratory (Tanya Trujillo)  
Erlene Green v. Clovis Municipal Public Schools (Gilbert Vigil),  
CIV 97-1517 MV/JHG  
Christie Cotinola (Robert Pidcock)  
Pino v. Mazda (Larry Coben, David Lee)  
Nora Garcia v. Holy Cross Hospital, et. al. (Charles Purdy)  
Sharon Lincoln v. Wal-Mart (Damon L. Weems)  
High Ridge Hinkle Joint Venture and Gene Hinkle v. City of  
Albuquerque (Randy Autio, City of Albuquerque)  
Tera Miller v. Esther Z. Caron (Paul Maestas)  
Robert Highfill/Gonzalo Gonzales (James G. Whitley)  
John C. de Baca v. Los Alamos Medical Center (Roger V. Eaton)  
Brenda Penser v. Streetball Partners, Inc. (Charles A. Purdy)  
Gary Eskew v. Rowley, et. al. (James K. Gilman)  
Gabaldon et. al. v. Jaramillo, et. al. (Tova Indritz)  
Sousea and Saaevendra v. (Jeff Brown and William Carpenter)  
Thomas Haynes v. Cox, et. al. (Roger Eaton)  
Susan Leghart v. City of El Paso (Brad Hall)

1999

McCrossan v. New Mexico Transportation and Highway Dept. (Steve Bunch)  
Tana Dominguez v. Pinkerton Security (Carolyn Nichols)

Trial/Deposition Testimony, M. Brian McDonald, Ph.D.

Teresa Gay v. American National Insurance (Floyd Wilson)  
Vaiza v. Lovelace Health Systems (Stephen Durkovich)  
Ken Haney (Gilbert Vigil)  
Lula Salazar (Anthony G. Lopez)  
Daniel Cordova v. Public Service Co. of NM (Robert Conklin)  
Cashner v. American Stores (Charles Currier)  
David Newell v. USA (Ron Ross)  
Arlene Dixon v. Buena Vista Retirement Center (Warren Frost)  
Patricia Alquicira v. Martin (Mark Ish)  
Juan Burciaga v. Presbyterian ( Steve Durkovich)  
Maguire v. Kropinak, et. al. (Catherine Downing)  
Hudson v. Village Inn Pancake House of Albuquerque (Cody Kelley)  
Shrode v. Bernstein (Terry Word/Kris Bogardus)  
Renick and Michelle Worley v. Ross Livermore (Cullen Hallmark)  
Betty and Lonnie Quiroz v. Burlington Northern (Ed Chavez)  
Melinda Cordova v. Presbyterian Hospital (Patrick Sullivan)  
Tom B. Couch v. Astec Industries, et. al. (David Plotsky)  
Randy Clark v. City of Roswell, et. al. (Marcia Lubar)  
Pete Aguilar (Stephen Schmidt)  
Richard Peterson v. St. Vincent Hospital (Cullen Hallmark)  
Haygood v. Clark Company, Inc. (Terrence Revo)  
Felix Gonzales et. al. v. Dulce Independent Schools (Judith Herrera)  
Peterson v. Los Alamos Medical Center (Terry Word)  
Bendure v. Aztec Well Servicing, Inc. (Damon Weems)  
Salazar (Jarner) v. AAA Gas Company, et.al (Ron Morgan)  
James Schwiner v. Los Alamos National Labs (Bruce Hall)  
Santa Fe Natural Tobacco Company v. Robert Wolf (Scott Gordon)  
Gloria Zamora v. City of Santa Fe (Robert Rothstein)  
Eleanor Romo, et. al. v. Allsup's Convenience Stores (Robert Ortiz)  
Helen Benton v. Lovelace Health (Damon Weems, Mark Ish)  
Anthony Mendoza v. Presbyterian Healthcare, et. al. (Lisa Vigil)  
Laura Summerville v. Presbyterian Healthcare, et. al.(David Martinez)  
Benito Cantu (William Teel)  
Jesus Valverde ( Joseph Camacho)  
William Corbett v. Martin (Patrick Casey)

2000

Charles Swagerty (William Gilstrap)  
Nancy Redden v. Robert Castillo, MD, et. al. (James Gilman)  
Justine Jones, et. al. v. Bruce Barrus, et. al. (Jere Corlett)  
Schultz v. NM Highway Department (Nicholas Gentry)  
Joel Vidana v. Lumber, Inc. (Gilbert Vigil)  
Bill Turner v. The College of Santa Fe (Michael Armstrong)  
Mary C. Galloway ( James Roach)

Trial/Deposition Testimony, M. Brian McDonald, Ph.D.

John Demmon v. Petsmart, Inc. (Ken Martinez)

Ursula Hendrich (Patrick Sullivan)

Penny Findley v. K-Mart (Jill Smith and Lori Bencoe)

Glenda Tafoya v. NM State Highway and Transportation Department,

CV-97-011 SIE (Bo Frazier)

Sharon Kay Aragon, et. al. v. University of California, RA-95-2387 (C),  
(Bruce Hall)

Trinidad Zepeda v. Lincoln County (Nicholas Gentry)

Kerry Kingsley v. Farley and Traub (Roger Eaton, Michael Hart)

Contreras. Sanchez v. Roadrunner Trucking (James Gilman)

Robert Miera, et. al. v. Primerica Life Insurance (Floyd Wilson)

Norwest Bank NM v. Billy the Kid Produce, Inc. (William Arland, III)

Dennis Salazar v. Empire Roofing (James Thomson)

**FEE/COMPENSATION POLICY**

Effective July 1, 1999

M. Brian McDonald, Ph.D.  
Economic Consultant

\$225 per hour for research, consultation, and evaluation.

\$700 deposition or trial testimony fee in Albuquerque covering the first two hours as a minimum; \$250 per hour thereafter.

Outside of Albuquerque, deposition and trial testimony is charged at \$225 per hour including travel time, plus travel expenses.